



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 58

May 13, 2008

H.R. 980 – Public Safety Employer-Employee Cooperation Act of 2007

Calendar No. 275

On July 20, 2007, H.R. 980 was read for a second time and placed on the Senate Calendar.

Noteworthy

- It is anticipated that once the Senate begins consideration of H.R. 980, a substitute amendment in the form of S. 2123 will be offered. S. 2123, sponsored by Senator Gregg, has 32 cosponsors.
- S. 2123 would provide public safety officers such as police, firefighters, and emergency medical service personnel with the right to collectively bargain. The bill would establish minimum standards for collective bargaining that state laws must meet, including: the right of public safety officers to collectively bargain over wages, hours, and working conditions; a dispute resolution mechanism; and enforcement of contracts through state courts.
- The Congressional Budget Office (CBO) has not issued a cost estimate on the Senate substitute. Last year, CBO estimated the cost of H.R. 980 to be \$44 million over the 2008-2012 period. CBO also stated that H.R. 980 contains several unfunded mandates, but could not estimate how state and local employers would be affected or whether the cost would exceed the threshold established in the Unfunded Mandates Reform Act.
- The House passed H.R. 980 on July 17, 2007, by a vote of 314-97.
- The Administration strongly opposes the legislation. In a letter last week the Attorney General and Secretaries of Labor and Homeland Security indicated that if “H.R. 980 or any other bill...were presented to the President, his senior advisors would recommend that he veto.”

Background

H.R. 980 would provide public safety employees (police, firefighters, and emergency medical service employees) with the right to collectively bargain with their employers. The bill would establish minimum standards for collective bargaining that state laws must meet, including: the right of public safety officers to collectively bargain over wages, hours, and working conditions; a dispute resolution mechanism; and enforcement of contracts through state courts. H.R. 980 was approved by the House with no amendments on July 17, 2007 by a vote of 314-97.

It is anticipated that once the Senate begins consideration of the bill, a substitute amendment in the form of S. 2123 will be offered. Senator Gregg introduced S. 2123, the Public Safety Employer-Employee Cooperation Act, on October 1, 2007. The bill currently has 32 cosponsors (20 Democrats, 10 Republicans, and two Independents). S. 2123 was referred to the HELP Committee but has not been considered by the committee. Senators Gregg and Harkin introduced an amendment to the farm bill (S.A. 3615 to S.A. 3830) that was identical to S. 2123. It did not receive a vote. In the 107th Congress, Senator Daschle offered a similar bill as an amendment (S.A. 2044) to the Labor-HHS Appropriations bill for FY 2002. The amendment failed on a cloture motion by a vote of 56-44.¹

Prior versions of the bill have been introduced in the 107th, 108th, 109th and 110th Congresses. In the 108th Congress, the bill was reported out of the HELP Committee but was not voted on by the full Senate.

S. 2123 is similar but not identical to H.R. 980. Major differences between the House and Senate bills include:

- *Judicial Review*—The House bill gives the employee the right to judicial review, during which, the employee has 60 days to petition the United States Court of Appeals. The Senate bill explicitly gives both the employee and the employer the right to judicial review.
- *Prohibition language*—The House bill only explicitly prohibits a lockout or a strike. The Senate bill prohibits a “lockout, sickout, work slowdown, strike, or any other action” meant to influence contract negotiations or that disrupts the delivery of emergency services.
- *Volunteer firefighter language*—The House bill includes parties subject to the National Labor Relations Act (NLRA), which does not cover public sector employees such as public safety officers. The Senate bill omits the reference to the NLRA, and makes this provision applicable to those states which become subject to the FLRA review described in section 5, prohibiting those states from forbidding volunteer and part-time activities during off-duty hours.

The impact on states is uncertain as the bill leaves to the Federal Labor Relations Authority (FLRA) the authority to review existing state collective bargaining laws to see if they meet the

¹ Senate Recorded Vote 323, November 6, 2001.

minimum standards called for in the bill. States that do not meet the standards established by the FLRA would have two years to enact new public safety collective bargaining laws. States that do not establish their own collective bargaining laws within the two years would be subject to regulations to be issued by the FLRA within one year of enactment.²

In testimony before the Subcommittee on Health, Employment, Labor and Pensions of the House Education and Labor Committee, a witness for the National Public Employer Labor Relations Association indicated that 38 states provide collective bargaining for police officers and/or firefighters.³ However, reviews by experts have indicated that it is likely that 23 of these states would not comply and would be deemed to “not fully protect the collective bargaining rights of public safety employees.”⁴ According to the Bureau of National Affairs, two states (North Carolina and Virginia) prohibit public safety employees from engaging in collective bargaining; four states (Alabama, Arkansas, South Carolina, and Tennessee) allow bargaining by local option, but prohibit legally enforceable contracts; 11 states (Arizona, Colorado, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Texas, and West Virginia) allow bargaining by local option; and four states (Idaho, Missouri, Utah, and Wyoming) require bargaining for firefighters, but not for law enforcement officers.⁵

Supporters of the bill include the International Association of Firefighters, National Troopers Association, Fraternal Order of Police, and the American Federation of State, County and Municipal Employees.

Opponents of the bill include National League of Cities, National Association of Counties, International Public Management Association for Human Resources, and National Sheriffs Association.

Bill Provisions

Note: This notice pertains to the substitute amendment of S. 2123 expected to be offered on the floor.

Section 1 of the legislation contains the short title of the bill, “Public Safety Employer-Employee Cooperation Act of 2007.”

² Daily Labor Report (DLR), “House Approves Bill to Require Bargaining for State and Local Public Safety Employees,” Bureau of National Affairs, July 18, 2007.

³ Theodore Clark, Jr. testifying on behalf of the National Public Employer Labor Relations Association, in testimony before the House Education and Labor Committee, June 5, 2007. [The 38 states are identified as Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, and Wisconsin.]

⁴ DLR.

⁵ DLR.

Section 2 contains the declaration of purpose and policy including that labor-management cooperation fully utilizes the strengths of both parties to best serve the interests of the public, and that state and local public safety officers play an essential role in the efforts of the United States to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials, and other mass casualties.

Section 3 contains definitions, including that of emergency medical services, labor organization, and public safety officer, and that the “authority” in the bill means the Federal Labor Relations Authority. “Substantially provides” means the right to form and join a labor organization, the right to bargain over wages, hours, and conditions of employment, the right to sign an enforceable contract, and the availability of some form of mechanism to mediate disputes.

Section 4 provides for the determination of rights and responsibilities. Specifically, within 180 days of enactment, the Federal Labor Relations Authority (FLRA) is to make a determination as to whether a state substantially provides for the rights and responsibilities stipulated in the bill. Section 4 also contains judicial review by the United States Court of Appeals for any person or employer aggrieved by the determination of the FLRA.

This section also contains the rights and responsibilities the FLRA is to consider in determining if what a state provides is comparable to or greater than what is stipulated in the bill, including whether a state:

1. Grants public safety officers the right to form and join a labor organization;
2. Requires public safety employers to recognize, agree to bargain, and commit any agreements to writing with the employees’ labor organization;
3. Permits the bargaining over hours, wages, and terms and conditions of employment; and
4. Requires enforcement through state courts.

Section 5 requires the Federal Labor Relations Authority to issue regulations within one year of enactment establishing collective bargaining procedures for employers and public safety officers in states which do not substantially provide for such rights and responsibilities as determined by the FLRA. The FLRA shall prescribe the following in regulations:

1. The appropriate units for labor organization representation;
2. Supervision of elections to determine representation by a labor organization;
3. Resolution of any issues relating to the duty to bargain;
4. The conduct of hearings and resolution of complaints of unfair labor practices;
5. Protection of the right to join or not to join a labor organization; and
6. Procedures for any actions deemed necessary and appropriate to effectively administer the act.

This section also contains enforcement provisions. The FLRA may petition the United States Court of Appeals with jurisdiction over the parties to enforce any final orders, and for appropriate temporary relief. Any party has a private right of action to file suit in state court if the FLRA has not filed a petition for enforcement.

Section 6 contains a no-strike prohibition that extends to concerted refusals to work that “measurably disrupt emergency services” and are designed to compel agreement to a “proposed contract,” terms not defined in the bill. Sympathy strikes on behalf of other unions, or strikes over a grievance do not appear to be covered. Section 6 specifically exempts refusals to perform duties “not required under the mandatory terms and conditions of employment,” a term which is not defined.

Section 7 contains the proviso that existing collective bargaining units and agreements shall not be invalidated by enactment of this act.

Section 8 contains construction and compliance provisions, including:

1. Nothing in the act shall preempt or limit rights provided by any state or political subdivision of any state that provide greater or comparable rights and responsibilities than provided by the act;
2. Nothing in the act shall prevent a state from enforcing its right-to-work law that prohibits employers and labor organizations from negotiating a labor agreement that requires union membership or payment of union fees as a condition of employment;
3. Nothing in the act shall permit a state subject to the FLRA regulations required in section 5 to negotiate a prohibition of employees engaging in part-time employment or volunteer activities during their off-duty hours;
4. Nothing in the act shall prohibit an exemption for a political subdivision with a population of less than 5,000 or one that employs less than 25 full-time employees; and
5. Nothing in this act shall preempt existing rights and responsibilities solely because they do not require bargaining with respect to pension, retirement, or health benefits.

This section also states that the definition of an employee for purposes of this act does not include elected officials. The act shall not require states or any of their political subdivisions to rescind their existing laws which provide rights and responsibilities for public safety officers that are comparable or greater than those required in this bill.

Section 9 contains authorization of appropriations in such sums as may be necessary.

Cost

The Congressional Budget Office (CBO) has not issued a cost estimate on the Senate substitute. However, last year, CBO estimated that “implementing H.R. 980 would cost \$44 million over the 2008-2012 period, subject to appropriation of the necessary funds. Enacting the bill would not affect direct spending or revenues.”

CBO also stated that “H.R. 980 contains several intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Because of uncertainties about how employees would exercise the collective bargaining rights that would be authorized by the bill and, consequently, how state and local employers would be affected, CBO cannot estimate whether the costs of the intergovernmental mandates would exceed the threshold established in

the act (\$66 million in 2007, adjusted annually for inflation). CBO estimates that the direct costs of the private-sector mandates would be well below the annual threshold specified in UMRA (\$131 million in 2007, adjusted annually for inflation)."

Administration Position

On May 8, Attorney General Mukasey, Secretary of Labor Chao, and Secretary of Homeland Security Chertoff sent a letter to Senators Reid and McConnell stating that if "H.R. 980 or any other bill that presents the concerns below were presented to the President, his senior advisors would recommend that he veto." Chief among the Administration's concerns are the following:

- The bill would preempt state authority to regulate the collective bargaining rights of its state and local public safety employees, displacing the decisions behind existing statutes and constitutions;
- Federal preemption of state authority to determine bargaining rules with public-safety employees could result in substantial cost increases and force localities to respond by cutting the size of their local enforcement workforce or by raising taxes;
- Concern that the bill could upset the nation's carefully developed emergency-response functions; and
- The bill raises serious Constitutional concerns under the Tenth Amendment as it is not clear the courts would uphold the Federal government's authority to impose a comprehensive regulation of the labor relations between states and their employees in the manner prescribed in the bill.

Today, the Administration issued a Statement of Administration Policy restating that it "strongly opposes" the bill, and reiterating the concerns of the May 8 letter.⁶

Possible Amendments

In addition to the substitute amendment to H.R. 980, a number of additional amendments are possible, including:

- A public employees bill of rights;
- Unfunded mandate exemption to permit localities to opt out of the law should it be determined that compliance would constitute an unfunded mandate;
- Add additional requirements to the bill's section prohibiting strikes and lockouts;
- Require unions to obtain an opt-in from workers on how they can spend dues outside of collective bargaining functions;
- Require secret-ballot union elections for public service workers;

⁶ Statement of Administration Policy on H.R. 980, the Public Safety Employer-Employee Cooperation Act of 2007, May 13, 2008. <http://www.whitehouse.gov/omb/legislative/sap/110-2/index-date.html>

- Require protection of public-service workers' right to work;
- Increase the bill's exemption for localities;
- Volunteer firefighters;
- Loser pays with regards to this bill;
- Harmonize state and federal bargaining standards;
- Additional protections against conflicts of interest for unions representing public safety workers;
- Union violence;
- Drug testing for all public safety officers; and
- Good Samaritan law.